



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/025,027	12/19/2001	Michael Tod Morman	KCC-16,088	5892

35844 7590 10/31/2005

PAULEY PETERSEN & ERICKSON  
2800 WEST HIGGINS ROAD  
HOFFMAN ESTATES, IL 60195

EXAMINER
----------

REICHLE, KARIN M

ART UNIT	PAPER NUMBER
----------	--------------

3761

DATE MAILED: 10/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/025,027	<b>Applicant(s)</b> MORMAN ET AL.	
	<b>Examiner</b> Karin M. Reichle	<b>Art Unit</b> 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 11 August 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 2, 5 and 8-10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3, 4, 6, 7 and 11-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Election/Restrictions*

1. Claims 2, 5 and 8-10 are still withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 2-12-2004.

### *Specification*

2. The following action is based on the abstract filed 5-16-05, the amendments to the specification and claims filed 8-11-05 and the remarks filed 1-18-05 and 5-16-05 and 8-11-05.

### *Claim Objections*

3. Claims 1, 3-4, 6-7 and 11-25 are objected to because of the following informalities: in claim 1, on the last two lines, “of the resultant garment” should be deleted and on the last line, after, “width”, --in the resultant garment-- should be inserted. In claim 4, line 2, after “wherein”, --the-- should be inserted. In claim 7, line 2, after “to the”, --cuff area of the--. In claim 14, last two lines, “the waistbands of the resultant garment” should be --the waistband portion-- and after “width” on the last line, --in the resultant garment-- should be inserted. In claim 15, last two lines, “areas of the resultant garment” should be --area-- and after “width” on the last line, --in the resultant garment-- should be inserted. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

4. Claims 3-4, 6, 13 and 16-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 3-4 and 6, are one or both of the web layers and the web as set forth in claim 1 one and the same, i.e. how many webs at a minimum are required by claims 3-4 and 6? This also applies to the first material claimed in claims 16 and 21 and the web as set forth in claim 1 and the second material claimed in claims 16 and 21 and the elastic material as set forth in claim 1. In claim 13, subsection c) is now internally inconsistent, i.e. how can the selected area of the web assume a second width at areas outside of the same selected area?

***Double Patenting***

5. Applicant is advised that should claim 7 be found allowable, claim 16 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

***Claim Language Interpretation***

6. Due to the lack of clarity discussed supra, the specification and the Applicant's remarks, "a web of precursor garments" as set forth in claims 1, and 13-15 will be interpreted as at least one layer which is be used in the making of a garment. This web will be considered to be

Art Unit: 3761

the backsheet web layer at a minimum in claims 3 and 6, either such layer or the topsheet at a minimum in claim 4, and the first material in claims 16-25. The elastic material in claim 1 will be considered to be the second material at a minimum in claims 16-25. With regard to claim 13, the selected areas on lines 2 and 4 of section c) will be interpreted as the area affixed to the elastic material. The claim language is also interpreted in light of the definitions at page 9, lines 4-10, page 9, line 20-page 10, line 3, page 10, line 21-page 11, line 8, and page 11, lines 12 et seq. It is also noted that the exact amount of tensioning or necking and the exact dimensions of the first and second widths nor the exact difference between the latter has been set forth, i.e. the tension and necking could be such that the second width could be just larger than the first width. It is further noted that the second width is not required to be exactly the same as the original width.

***Claim Rejections - 35 USC § 102***

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

8. Claims 1, 3, 4, 6-7, and 11-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Litchholt '027.

See Figures 1-3 and 5, Claim Language Interpretation section supra, col. 4, lines 43-46, col. 15, lines 57-65, col. 16, lines 10-12, col. 7, lines 4-12, col. 18, lines 6-10, and 16-28, col. 18, line 66-col. 19, line 2, col. 19, lines 17-21, col. 20, lines 44-51 and 26-33, col. 21, lines 27-55, col. 25, lines 19-40, col. 26, lines 13-17 and 28-63, col. 27, lines 30-51, col. 28, lines 22-23, col. 29, lines 3-5, 50-56 and col. 32, lines 31-43, i.e. Litchholt teaches a method of producing elastic

Art Unit: 3761

cuffs, i.e. waist and/or leg, for a resultant garment, i.e. diaper, obtained from a web, i.e. a topsheet and/or backsheet, of precursor garments which method includes the steps of applying tension sufficient to prestrain or prestretch, e.g. distort, the web of precursor garments, i.e. at least a portion thereof, to prestrain or prestretch, e.g. distort, a cuff area of a precursor garment to a first dimension, the cuff area of the precursor garment being extendible, i.e. having the capability to extend, when the tension is removed, affixing an elastic material to the cuff area while at the first dimension, i.e. while tensioned, removing the tension from the precursor garment web with the elastic material thereon and the elastic material holding the cuff area at a dimension in the resultant garment. It is the Examiner's first position that the Litchholt reference explicitly teaches necking to a first dimension by the tensioning, the web capability of extensibility to a second greater non-necked dimension and causing the web to assume such second dimension at areas outside the cuff area having the elastic material thereon upon removal of the tensioning, and holding of the selected area of the web by the elastic material at a dimension narrower than the second dimension at the cuff area because, e.g., Litchholt teaches tensioning at least a drawable nonwoven (It is noted that such could be at most elastomeric) to a "distorted configuration", i.e. a necked configuration, using the tension rollers and combining rollers, then completely attaching an untensioned elastic to at least cuff forming portions of such nonwoven and the nonwoven material itself not having, at the very least, the capability to full return to its original configuration after tensioning, e.g. can return to just less than its original configuration, at the cited portions above. In any case, the Examiner's second position, since the Litchholt reference provides such teachings, i.e. the same steps performed using the same materials as claimed, note the definitions in the specification set forth in the Claim Language

Art Unit: 3761

Interpretation section supra, there is sufficient factual basis for one to conclude that the selected area of the material is necked and held by the unstretched elastic material at the necked dimension at which the elastic was attached rather than retract, i.e. expand, towards its original undistorted dimension when the tensioning is removed while the areas of the web not underlying and attached to the elastic material, i.e. only the material, will retract, i.e. expand, towards its relaxed original undistorted dimension, i.e. a greater non-necked second dimension, when the tensioning is removed, i.e. such is inherent in the method taught by Litchholt. See MPEP 2112. With regard to claims 19-20 and 24-25, see col. 32, line 40.

### ***Response to Arguments***

9. Applicant's remarks with regard to the informalities have been noted but are either deemed moot in that they have not been reraised or are deemed not persuasive for the reasons set forth supra. Applicant's remarks with regard to the prior art rejections have been considered but are deemed moot in that those prior art rejections have not been reraised. It is noted however that Applicant's remarks with respect to claims 7, 16 and 21 are narrower than the claim language which does not require the flat cuff area in the resultant garment. Applicant's request for an interview is noted. However in light of the new grounds of rejection and other new issues, such request is held in abeyance until review of this action by the Applicant. Furthermore, in order more readily identify such a request in a timely manner, Applicant is requested to personally contact the Examiner with any further requests for an interview.

*Conclusion*

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any new grounds of rejection were necessitated by the amendments to the independent claims.

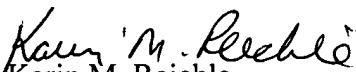
11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (571) 272-4936. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Art Unit: 3761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Karin M. Reichle  
Primary Examiner  
Art Unit 3761

KMR  
October 24, 2005